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SENATE

REPORT
99-470

PROVIDING FOR THE RESTORATION OF FEDERAL RECOGNITION TO THE YSLETA DEL SUR PUEBLO AND THE ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS, AND FOR OTHER PURPOSES

SEPTEMBER 23 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

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Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 1344]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 1344) providing for the restoration of Federal recognition to the Ysleta del Sur Pueblo and the Alabama and Coushatta Indian Tribes of Texas, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute.

PURPOSE

H.R. 1344 was introduced in the House of Representatives on February 28, 1985, by Congressman Coleman of Texas. The purpose of H.R. 1344 is to restore Federal recognition or supervision to two Indian tribes located within the State of Texas. By Act of August 23, 1954, the Federal trust relationship with the Alabama and Coushatta Tribe was terminated with a proviso authorizing the transfer of tribal lands to the State of Texas. The lands so conveyed were to be held in trust by the State of Texas for the benefit of the tribes or their members. By the Act of April 12, 1968, legislation was enacted designating the descendants of the Tiwa Indians living in El Paso, Texas, of the Ysleta del Sur Pueblo, as Tiwa Indians of Ysleta, Texas, and provided that the responsibility, if any, of the United States for the said Indians was transferred to the State of Texas.

H.R. 1344 will restore Federal recognition to the Alabama and Coushatta Indian Tribes as one tribal unit for purposes of this Act, and provides for recognition and restoration of the Federal trust relationship between the United States and the Tiwa Indians, with

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the proviso that such Indian group shall henceforth be known as the Ysleta del Sur Pueblo. The bill also provides for taking of tribal or individually owned Indian lands into trust, and provides for expansion of the Indian land base in consultation with the State. The State shall exercise civil and criminal jurisdiction as if the State had assumed jurisdiction with the consent of the tribes under the provisions of the Indian Civil Rights Act of 1968 (25 U.S.C. 1321, 1322).

BACKGROUND

The Pueblo at Ysleta del Sur was established in 1680 following the Pueblo Indian revolt against the Spanish. The revolt forced the Spanish to retreat from Santa Fe to El Paso, and the Spanish forced a large number of Tiwa Indians from Isleta Pueblo to accompany them. The Indians were settled at Ysleta del Sur and in 1682 the mission church was built, which still stands today. In 1751 Spain granted the land of Ysleta Pueblo to its inhabitants as communal property, measuring one league in all directions from the church doors.

On May 9, 1871, the Texas legislature passed an Act to incorporate the Town of Ysleta in El Paso County, and through ensuing actions of the newly created town, nearly all of the 23,000 acres of the Ysleta Spanish grant were patented to non-Indians. In May of 1967 the Texas legislature enacted legislation which authorized the State to accept a transfer of Federal trust responsibilities to the Tigua Indian Tribe, and by Act of April 12, 1968, Congress transferred to the State the responsibility, if any, of the United States for the said Indians.

Texas now holds a 100 acre reservation in trust for the tribe and, through the Texas Indian Commission, provides a superintendent, as well as administrative and economic development funding for the tribe. A recent opinion of the Texas Attorney General has thrown in doubt the continuation of this trust relationship between the State and tribe.

The Alabama-Coushattas are a state recognized tribe of approximately 500 full blood Indians residing on a 4,600 acre reservation near Livingston, Texas. The State of Texas purchased lands in 1854 for a permanent home for the Alabama and Coushatta Indians (in part because of the tribes assistance to Sam Houston in Texas' war for independence) and since then the State has stood in the role of trustee to the tribes. A Federal trust relationship in 1928 when the United States purchased additional reservation lands for the tribe and, from 1928 to 1954, Texas and the United States maintained a joint trust responsibility to the tribe. The 1954 Act of Congress terminated the trust relationship of the United States with the tribe, but the relationship with the state continued.

In 1983 the Texas Attorney General issued an Opinion (No. JM-17) in which he concluded that the tribe's trust relationship with the State violated the Equal Rights Amendment to the State Constitution, thus throwing in jeopardy the continued trust status of the tribe's lands and its continued funding from the State.

LEGISLATIVE HISTORY

H.R. 1344 was introduced in the House by Congressman Coleman of Texas and was referred to the Committee on Interior and Insular Affairs for consideration. The Committee held hearings on October 17, 1985; the bill was reported out of Committee on December 15, 1985; and was passed by the House and sent to the Senate on December 16, 1985.

H.R. 1344 was referred to the Select Committee on Indian Affairs for consideration. The Committee held hearings on H.R. 1344 on June 25, 1986. H.R. 1344 was considered by the Select Committee at a business meeting on September 15, 1986, and was ordered reported out of Committee with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on September 15, 1986, with a quorum present, by unanimous vote recommends the Senate pass H.R. 1344, as amended in the nature of a substitute.

COMMITTEE AMENDMENTS

The Committee recommends an amendment in the nature of a substitute.

SECTION-BY-SECTION ANALYSIS

Section 1. This section cites this Act as the "Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act".

Section 2. This section authorizes the Secretary of the Interior to promulgate regulations to implement this act.

Title I. Ysleta del Sur Pueblo Restoration

Section 101. This section defines certain terms for the purpose of this bill.

Section 102. This section states that from now on, the Tiwa Indians of Ysleta, Texas, shall be known as the Ysleta del Sur Pueblo.

Section 103. This section restores Federal Recognition to the Ysleta del Sur Pueblo as an Indian tribe and states that any rights of the tribe and its members which may have been lost under the Tiwa Indian Act is hereby restored. This Section also makes all benefits available to Federally recognized Indian tribes available to the Ysleta del Sur Pueblo. This section further provides that nothing in this Act shall affect any property right or contractual obligation in existence before the enactment of this Act.

Section 104. Subsection (a) provides that nothing in this section shall affect the power of the State of Texas to enact special legislation, and the State of Texas is authorized to perform any services that would benefit the Tribe that are not inconsistent with the provisions of this Act.

Subsection (b) provides that the Tribal Council shall represent the tribe in the implementation of this title and shall be legally en-

titled to enter into contracts and administer programs for the Tribe.

Section 105. Subsection (a), (b) and (c) provide that the reservation is hereby declared to be a Federal Indian reservation and also provides that the Secretary shall accept any offer by the State to convey title to any land within the reservation held in trust on the date of enactment of this Act by the State for the benefit of the tribe. The Secretary shall hold such land in trust for the benefit of the Tribe and take in trust any land held by the tribe upon written request by the tribe.

Subsection (d) provides that the United States Attorney General shall approve any deed from the State or the tribe which conveys title to land within El Paso or Hudspeth Counties, Texas to the United States to be held in trust by the Secretary for the benefit of the tribe.

Subsection (e) provides that the Secretary shall be able to erect permanent improvements on the land notwithstanding the fact that title to such land has not been transferred to the Secretary by the State or the tribe.

Subsection (f) provides that the State shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State had assumed jurisdiction with the consent of the tribe under the Act of April 11, 1968.

Subsection (g), (h), (i) and (j) of this section provides for the Secretary to negotiate with the tribe for the proposal of a plan for the enlargement of the reservation. Upon approval of such plan by the tribe, the Secretary shall submit such plan, in the form of proposed legislation, to the Congress. These subsections also require consultation with local governments and other interested parties before such plan is sent to Congress.

Section 106. This section repeals the Tiwa Indian Act.

Section 107. This section provides that gambling, lottery or bingo as defined by the laws and administrative regulations of the State of Texas is prohibited on the tribe's reservation and on tribal lands. The provisions of Section 107 are also applicable to any lands acquired after the date of enactment of the Act and without regard to whether such lands are located within or outside of El Paso and Hudspeth Counties, Texas, if they are taken into trust by the Secretary and made a part of the tribe's reservation. The prohibition contained in this section will also apply to any lands outside the reservation which might be acquired by the tribe or a member thereof and be taken into trust. With regard to tribal lands not taken into trust and therefore not made a part of the tribe's reservation, the laws and administrative regulations of the State of Texas related to gaming, gambling, lottery or bingo shall be applicable. This section also provides penalities for violations of these provisions. This section also provides that nothing in this section shall be construed as a grant of civil regulatory jurisdiction to the State of Texas. This provision is a restatement of the law as provided in the Act of August 15, 1953 (67 Stat. 588, P.L. 83–280), as amended by the Act of April 11, 1968 (82 Stat. 77, P.L. 90–284), and should be read in the context of the provisions of Section 105(f).

Section 108. Provides that the tribe's membership shall consist of individuals listed on the Tribal Membership Roll approved by the

tribe's Resolution No. TC-5-84 approved December 18, 1984, and approved by the Texas Indian Commission's Resolution No. TIC-85-005 adopted on January 16, 1985; and a descendant of an individual listed on that Roll if the said descendant (i) has ⅛ degree or more of Tigua-Ysleta del Sur Pueblo Indian blood, and (ii) is enrolled by the tribe. Subsection (b) allows the tribe to remove an individual from tribal membership where such enrollment was improper. Subsection (b) further provides that the Secretary, in consultation with the tribe, may review the Tribal Membership Roll and if said Secretary so determines that an individual enrolled by the tribe does not meet the criteria for membership set out in the tribe's Resolution No. TC-5-84, may, but only after affording the individual or the tribe and administrative appeal, declare such individual ineligible for Federal services provided to Indians because of their status as Indians. However, nothing in this section is intended to limit the authority of the tribe to determine its membership criteria or the eligibility or ineligibility of an individual to membership in the tribe, for purposes other than eligibility for Federal Indian services.

Title II: Alabama and Coushatta Indian Tribes of Texas

Section 201. Defines certain terms for the purposes of the Act.

Section 202. Provides that the Alabama and Coushatta Indian tribes shall be considered as one tribal unit for the purposes of this title and any other law.

Section 203. Provides that Federal recognition as an Indian tribe is hereby restored to the tribe and all rights which may have been lost under the August 23, 1954 Act which terminated the tribes are hereby restored.

This section further provides that the tribes and its members shall be eligible to receive all benefits provided to federally recognized Indian tribes. The section also provides that except as provided by this Act, the enactment of this title shall not affect any property or contractual rights in existence before the enactment of this title.

Section 204. Subsection (a), provides that nothing in this Act shall affect the power of the State of Texas to enact special legislation which would benefit the tribe. Furthermore, the State of Texas is authorized to perform any services for the benefit of the tribe that are not inconsistent with the provisions of this Act.

Subsection (b) provides that the current tribal constitution and bylaws of the tribe, on file with the Committee on Interior and Insular Affairs is hereby declared to have been approved pursuant to section 16 of the Act of June 18, 1934. In addition, all laws and rules of law, specifically, the Act of April 11, 1968 (82 Stat. 77) shall apply to members of the tribe, the tribe, and the reservation.

Subsection (c) provides that the provisions of this title shall not affect the powers of the Tribal Council. This Council shall represent the tribe in the implementation of this title and shall have the power to enter into contracts and administer tribal programs for the tribe.

Section 205. Provides that upon written request of the Tribal Council, the Secretary shall conduct an election in accordance with

section 16 of the Act of June 18, 1934 for the purpose of adopting any new constitution and bylaws for the tribe.

Section 206. Provides that the reservation is hereby declared to be a Federal Indian reservation for the use and benefit of the tribe without regard to whether legal title to such lands is held in trust by the Secretary. The Secretary is directed to accept any offer from the State to convey title to any lands held in trust by the State. The Secretary shall hold such land in trust for the benefit of the tribe.

The Secretary is also directed to take any land in trust for the benefit of the tribe which is held by the tribe and located within the reservation.

This section also provides that the Attorney General of the United States shall approve any deed which conveys land from the State or the tribe of the United States.

Lastly, this section provides that the State of Texas shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State has assumed jurisdiction with the consent of the tribe under the Act of April 11, 1968.

Section 207. This section provides that gaming, gambling, lottery and bingo as defined by the laws and administrative regulations of the State of Texas is prohibited on the tribe's reservation and on tribal lands. The provisions of Section 207 are also applicable to any lands acquired after the date of enactment of the Act and without regard to whether such lands are located within or outside of the reservation of Polk County, Texas, if it is taken into trust by the Secretary and made a part of the tribe's reservation. The prohibition contained in this section will also apply to any lands outside the reservation which might be acquired by the tribe or a member thereof and be taken into trust. With regard to tribal lands not taken into trust and therefore not made a part of the tribe's reservation, the laws and administrative regulations of the State of Texas related to gaming, gambling, lottery or bingo shall be applicable. This section also provides penalities for violation of these provisions. This section also provides that nothing in the section shall be construed as a grant of civil regulatory jurisdiction to the State of Texas. This provision is a restatement of the law as provided in the Act of August 15, 1953 (67 Stat. 588, P.L. 83-280), as amended by the Act of April 11, 1968 (82 Stat. 77, P.L. 90-284), and should be read in the context of the provisions of Section 206(f).

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for H.R. 1344, as amended in the nature of a substitute, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 16, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1344, the Ysleta del Sur Pueblo and Alabama and Cou-

shatta Indian Tribes of Texas Restoration Act, as amended and ordered reported by the Senate Select Committee on Indian Affairs, September 15, 1986.

This bill would grant federal recognition to the Ysleta del Sur and the Alabama and Coushatta Indian tribes. Although the bill does not specifically authorize the appropriation of funds, it would make all members of the tribes eligible for all services and benefits available to federally recognized Indian tribes. Thus, while no additional expenditures are mandated by the bill, relevant federal agencies would be required to include members of the tribes among those eligible for benefits, and may seek additional funds in order to provide such benefits. The Bureau of Indian Affairs estimates that the average annual cost of providing such services and benefits nationally is about $1,300 per eligible Indian. If this average is applicable to the tribes recognized under this bill, then the annual cost would be about $2 million.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 1344, as amended, will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received the following Executive Communication regarding H.R. 1344.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, August 29, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to present our views on H.R. 1344, an act "To provide for the restoration of Federal recognition to the Ysleta del Sur Pueblo and the Alabama and Coushatta Indian Tribe of Texas, and for other purposes."

On October 17, 1985, we testified before the Committee on Interior and Insular Affairs in the House of Representatives and recommended deferral of action on H.R. 1344 pending our determination that the two tribes meet existing criteria which would make them eligible for Federal benefits as tribes. Since that time, additional information has been submitted to the Department and we do not now object to enactment of H.R. 1344 provided that it is amended as described below.

H.R. 1344 would confirm Federal recognition of the Ysleta del Sur Pueblo and restore it to the Alabama and Coushatta Indian Tribe of Texas. Since we view the Federal relationship with the Ysleta del Sur Pueblo as being very different than the Federal relationship with the Alabama and Coushatta Tribe, this report will address each title of the act independently.

Title I of H.R. 1344 would confirm Federal recognition of the Ysleta del Sur Pueblo including the trust relationship between the United States and the tribe and all their rights and privileges which were diminished or lost under the termination act. The tribe would be eligible for services extended to federally recognized Indian tribes. The State would continue to exercise civil and criminal jurisdiction in the reservation and the State's power to enact legislation benefiting the tribe would not be affected. The existing tribal council would have authority to enter into grant and contract arrangements with Federal agencies and to administer programs for the tribe. Land could be taken in trust by the Secretary of the Interior (Secretary) for the benefit of the tribe if located in El Paso or Hudspeth Counties, Texas.

The Ysleta del Sur Pueblo (also known as the "Tiguas" or "Tiwas") is a group of some 1,175 people who live on a State reservation of approximately 100 acres in El Paso County, Texas. Ancestors of these people originally left the Ysleta Pueblo of New Mexico in 1680 following the Pueblo Indian revolt. The Federal Government has neither provided services to them as Indians nor entered into a treaty or other government-to-government arrangement. Therefore, our information regarding this group is largely based on the legislative history of the Act of April 12, 1968 (Public Law 90–287; 82 Stat. 93), which transferred the Federal responsibility for the tribe "if any" to the State of Texas, and the information we have received from the tribe and the Texas Indian Commission.

In our earlier statement we objected to the restoration of the Ysleta del Sur Pueblo because we viewed H.R. 1344 as proposing to give this tribe a Federal status it never had. We further stated that the issue of recognition would be best resolved by use of the existing Federal acknowledgment criteria under 25 CFR Part 83 that we use in determining whether any group should be acknowledged as a federally recognized Indian tribe. Since that time, the tribe has submitted additional data. Based on our review of the information submitted, it appears that the tribe meets our mandatory criteria for Federal acknowledgment. However, neither this documentation nor our evaluation of it has approached the level required of other Indian groups seeking Federal acknowledgment.

Although it continues to be our view that all groups seeking initial eligibility for Federal benefits as an Indian tribe should complete our usual acknowledgment process, we would not object to enactment of an amended Title I of H.R. 1344 because:

> Of the unique circumstances involving the 1968 Act in which Congress stated that (A) the tribe shall "be known and designated as Tiwa Indians of Ysleta, Texas", (B) any Federal responsibility for them was transferred to the State of Texas, and (C) that "none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to

the Tiwa Indians of Ysleta del Sur", thereby precluding our acknowledgment of them under 25 CFR Part 83;

The tribe's relationship with the State of Texas as a tribe for which the State has appropriated funds through that State's Indian Affairs Commission;

The tribe's acceptance as a Pueblo by the federally recognized Pueblos of New Mexico which are among the most traditional of Indian tribes; and

Our above-mentioned review of the information available to us at this time.

We have discussed with the tribe and the staff of this Committee the need for some amendments to meet our concerns regarding the tribe's membership criteria and the adoption of a constitution and bylaws. For the first time we are recommending a legislative distinction between tribal membership and eligibility for Federal services. We recommend that section 108 be amended to lock in the tribe's current membership requirements (which include a one-eighth degree descendancy requirement) as the basis for determining tribal members to be Indians for purposes of Federal law, including Federal Indian services and funding purposes, but the tribe should remain able to change its membership requirements in the future for tribal purposes. The amendment should authorize the Secretary to review the tribal membership roll at any time and, in consultation with the tribe, determine if a person is ineligible to be an Indian for purposes of Federal law and Indian services, and those individuals determined ineligible are not to be counted by the tribe for any formula funding purposes. The amendment should not preclude the application to the tribe's members of any additional requirements or restriction on eligibility for Federal Indian benefits that would otherwise be applicable.

We realize this procedure is a departure from our general policy of providing Federal services to federally recognized Indians as determined by tribal membership, but we think that this solution meets our concern of having to provide services to increasing numbers of tribal members and still allows the tribe to determine tribal membership. Moreover, we believe that the Congress should place some limit on the potential service population of tribes being made eligible for Federal benefits for the first time.

We would like to express our concern with the provision in Title I requiring the Secretary to submit a plan for reservation enlargement, in the form of proposed legislation, to the Congress. The provision does not indicate how any land acquisition would be financed. We must emphasize that, in the current fiscal climate, expenditures for land acquisition are an extremely low priority.

Title II of the act would restore Federal recognition to the Alabama and Coushatta Tribe including the Federal trust relationship and all their rights and privileges which were diminished or lost under the termination act. The tribe would be eligible for services extended to federally recognized tribes. The State would continue to exercise civil and criminal jurisdiction in the reservation and the State's power to enact legislation benefiting the tribe would not be affected. The tribe's current constitution and bylaws would be accepted by the Secretary and the tribal council would have authority to represent the tribe and its members in the implementa-

tion of H.R. 1344. If the tribal council requests an election to adopt a new constitution and bylaws, the Secretary would be required to conduct the election. The tribe's land may be taken in trust by the Secretary for the benefit of the tribe.

The tribe has some 500 members and a reservation of about 4,600 acres in Polk County, Texas. The Federal trust responsibility was terminated under the Act of August 23, 1954 (68 Stat. 768; 25 U.S.C. 721) which transferred the trust duties from the Federal Government to the State of Texas. Federal laws and programs for Indians no longer applied to the tribe or its members, except that its members were authorized to attend the Bureau of Indian Affairs schools and go to Indian Health Service hospitals. The tribe continued to operate under its approved constitution (with amendments necessary because of the 1954 termination act) and until recently the State provided funds to the tribe.

On March 22, 1983, the Attorney General of Texas issued an opinion questioning the trust relationship between the State and the Alabama and Coushatta Tribe. The opinion held that as a result of the 1954 termination act, the tribe no longer exists and its lands no longer constitute an Indian reservation. It is our understanding that the tribe has received notice that taxes are due on its land. It is apparent that the opinion impacts both tribes dealt with in H.R. 1344.

In our statement before the House of Representatives we said we needed more information to determine if the Alabama and Coushatta Tribe met the Administration's restoration criteria. We subsequently requested and received information from the Texas Indian Commission which we find verifies that the tribe does meet our restoration criteria.

We also had a concern about accepting the tribe's current constitution. By working with the tribe's attorney and this Committee's staff, we have agreed that an amendment to H.R. 1344 providing that the tribe's constitution is subject to the Indian Civil Rights Act and other applicable laws would meet this concern.

In conclusion, we do not object to enactment of H.R. 1344 with the amendments described in this report.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

HAZEL E. ELBERT,
Acting Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXIV of the Standing Rules of the Senate, it is the opinion of the Committee, that it is necessary to dispense with the requirements of this subsection to expedite the business of the Senate.

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